

***United States Court of Appeals
for the
District of Columbia Circuit***



**TRANSCRIPT OF
RECORD**

28

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Court of Appeals of the District of Columbia

JANUARY TERM, 1926.

No. 4452.

— 315 —
No. —, SPECIAL CALENDAR.

RICHARD G. ALLEN, APPELLANT,

vs.

UNITED STATES OF AMERICA

APPEAL FROM THE SUPREME COURT OF THE DISTRICT OF
COLUMBIA.

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Court of Appeals of the District of Columbia

No. 4452.

RICHARD G. ALLEN, Appellant,

VS.

UNITED STATES OF AMERICA.

a Supreme Court of the District of Columbia.

Criminal. No. 43285.

UNITED STATES OF AMERICA, Plaintiff,

VS.

RICHARD G. ALLEN, Defendant.

UNITED STATES OF AMERICA,
District of Columbia, ss:

Be it remembered that in the Supreme Court of the District of Columbia, at the City of Washington, in said District, at the times hereinafter mentioned the following papers were filed and proceedings had, in the above-entitled cause, to wit:

1 *Indictment.*

Filed in Open Court May 18, 1925. Morgan H. Beach, Clerk.

In the Supreme Court of the District of Columbia, Holding
a Criminal Term. April Term, A. D. 1925.

DISTRICT OF COLUMBIA, ss:

The Grand Jurors of the United States of America, in
and for the District of Columbia aforesaid, upon their oath,
do present:

That one Richard G. Allen, late of the District of Columbia aforesaid, on, to wit, the ninth day of April, in the year of our Lord one thousand nine hundred and twenty-five, and at the District of Columbia aforesaid, one automobile, of the value of one thousand three hundred and eighteen dollars and thirty cents, of the goods, chattels and property of one Eleanor R. Patterson, then and there being found, feloniously did steal, take and carry away; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

Second Count.

And the Grand Jurors aforesaid, upon their oath aforesaid, do further present:

That the said Richard G. Allen, on, to wit, the said ninth day of April, in the year of our Lord one thousand nine hundred and twenty-five, and at the District of Columbia aforesaid, one automobile, of the value of one thousand three hundred and eighteen dollars and thirty cents, of the goods, chattels and property of one Robert U. Patterson, then and there being found, feloniously did steal, take
2 and carry away; against the form of the statute in such case made and provided, and against the peace and government of the said United States.

PEYTON GORDON,
*Attorney of the United States in and
for the District of Columbia.*

(Endorsed:) Criminal. No. 43285. United States vs. Richard G. Allen. Grand larceny. Witnesses: Robert U. Patterson, Henry M. Jett, M. P. A true bill: Sam'l C. Redman, Foreman.

Supreme Court of the District of Columbia.

Friday, May 22nd, A. D. 1925.

The Court resumes its session pursuant to adjournment, Mr. Justice Siddons presiding.

* * * * *

Come as well the Attorney of the United States as the defendant in proper person, according to his recognizance,

and by his attorney W. E. Leahy, Esquire; whereupon the
defendant being arraigned upon the indictment, the
3 reading whereof he specifically waives, pleads not
guilty thereto and for trial puts himself upon the
country and the Attorney of the United States doth the like.

Memorandum.

October 21, 1925.—Verdict “not guilty” as to 1st count;
“guilty” as to second count.

Supreme Court of the District of Columbia.

Wednesday, November 18”, A. D. 1925.

The Court resumes its session pursuant to adjournment,
Mr. Justice Stafford, presiding.

* * * * *

Come as well the Attorney of the United States, as the
defendant in proper person, according to his recognizance
and by his attorneys Messrs. Wampler and Lynch; and
thereupon the defendant’s motion for a new trial coming
on to be heard, after argument by the counsel, is by the
Court overruled, to which action of the Court the defendant
by his attorneys prays an exception which is noted; and
thereupon it is demanded of the defendant what further he
has to say why the sentence of the law should not be pro-
nounced against him and he says nothing except as he has
already said; whereupon it is considered by the Court that
for his said offense, the said defendant be taken by the
Superintendent of the Washington Asylum and Jail, to the
said Asylum and Jail, thence to the Penitentiary, as desig-
nated by the Attorney General of the United States, there
to be imprisoned for the period of two (2) years, to
4 take effect from and including date of arrival of said
defendant at said Penitentiary; and thereupon the
defendant by his attorneys notes an appeal to the Court of
Appeals of the District of Columbia, from the judgment of
the Court in this case; whereupon the Court fixes the amount
of bond for costs on appeal at one hundred dollars, or fifty
dollars in cash, and the bond for the appearance of the de-
fendant at five thousand (\$5,000.00) dollars; and it is or-

dered by the Court that in lieu of surety on the recognizance, or of a cash deposit there may remain with the Clerk the certificate of deposit, Number 3799, of the Bank of St. Paul, St. Paul, North Carolina, under date of October 29", inst., in favor of Mr. Joseph Allen, in the sum of five thousand (\$5,000.00) dollars, to which said Joseph Allen files a signed agreement; whereupon the defendant enters into a recognizance in the sum of five thousand (\$5,000.00) dollars, to forthwith surrender himself to the custody of the Marshal of the District to be dealt with and proceeded against according to law in case the judgment appealed from shall be affirmed, or the appeal for any cause dismissed, or the judgment be reversed and a new trial ordered, or if he, the said defendant, depart the Court without leave.

Memorandum.

November 19, 1925.—Cost bond on appeal approved and filed.

5

Assignment of Errors.

Filed December 14, 1925.

* * * * *

The defendant assigns as error committed by the court in the trial of this case the following:

1. In the admission of evidence over the objection of defendant.

2. In overruling the motion of the defendant to require the Government to elect between the counts of the indictment at the close of the Government's case.

3. In overruling the motion of the defendant to direct the jury to return a verdict of not guilty at the close of the Government's case.

4. The denial of the motion of the defendant for directed verdict at the close of all the evidence in the case.

5. For errors of law contained in the charge of the court to the jury.

6. Because of error committed by the trial court, reading during his charge, parts of the evidence in the case.

7. The comments of the trial court, during his charge, on evidence read by him.

8. Errors of law committed by the trial court in his charge to the jury.

9. Error of the trial court in making a statement at the close of the charge to which exception was reserved.

10. Overruling motion of defendant to strike out
6 that part of the answer of the witness Rosier that
“it had been reported that a car had been stolen.”

T. MORRIS WAMPLER,
Attorney for Defendant.

Service of a copy of the foregoing is acknowledged this
14th day of December 1925.

E. RUSSEL KELLY,
Asst. U. S. Atty.

Designation of Record.

Filed December 14, 1925.

* * * * *

The Clerk of the Supreme Court of the District of Columbia will please prepare record on appeal in this case, and the following are hereby designated as necessary to be copied:

1. Indictment.
2. Plea.
3. Memo.: Verdict of the jury.
4. The judgment.
5. Memo.: Appeal noted in open court.
6. Memo.: Appeal bond approved and filed.
7. The bill of exceptions.
8. The assignment of error.
9. This designation.

T. MORRIS WAMPLER,
Attorney for Defendant.

Service of a copy of the above is acknowledged this 14th
day of December 1925.

E. RUSSEL KELLY,
Asst. U. S. Atty.

7 Supreme Court of the District of Columbia.

Saturday, January 2", A. D. 1926.

The Court resumes its session pursuant to adjournment,
Mr. Justice Bailey, presiding.

* * * * *

Stafford, J.

Now comes the defendant by his attorney T. M. Wampler, Esquire, and prays the Court to sign, and make a part of the record his Bill of Exceptions, taken during the trial of the case and filed on the 2nd day of January, 1926, which is accordingly done.

8 Supreme Court of the District of Columbia.

UNITED STATES OF AMERICA,
District of Columbia, ss:

I, Frank E. Cunningham, Clerk of the Supreme Court of the District of Columbia, hereby certify the foregoing pages numbered from 1 to 7, both inclusive, to be a true and correct transcript of the record, according to directions of counsel herein filed, copy of which is made part of this transcript, in cause No. 43285, Criminal, wherein the United States of America is Plaintiff and Richard G. Allen is Defendant, as the same remains upon the files and of record in said Court.

In testimony whereof I hereunto subscribe my name and affix the seal of said Court, at the City of Washington, in said District, this 2nd day of March, 1926.

[Seal Supreme Court of the District of Columbia.]

FRANK E. CUNNINGHAM,
Clerk.

By CHAS. B. COFLIN,
Assistant Clerk.

9 In the Supreme Court of the District of Columbia.

Criminal. No. 43285.

UNITED STATES

VS.

RICHARD G. ALLEN.

Notice.

To Honorable Peyton Gordon, United States Attorney for
the District of Columbia:

Please take notice that I shall submit to the Court for
settlement and approval, the bill of exceptions herein on the
2nd day of January 1926.

T. MORRIS WAMPLER,
Attorney for Defendant.

Service of a copy of the above notice, together with a copy
of the bill of exceptions therein referred to, is acknowledged
this 1st day of December 1925.

— — —,
Assistant District Attorney.

10 In the Supreme Court of the District of Columbia.

No. —.

UNITED STATES

VS.

RICHARD G. ALLEN.

Bill of Exceptions.

Be it remembered that this case came on for hearing on
the 21st day of October 1925, in the Supreme Court of the
District of Columbia, and the following proceedings were
had, and the following testimony offered.

To maintain the issue upon its part, the Government
introduced the following witnesses:

H. M. Jett: That he has been a police officer in this city for 19 years, a detective sergeant assigned to police headquarters; that on May 2nd, 1925, the witness saw the defendant at Lumberton, N. Carolina, and two or three days later at St. Paul, North Carolina, when he was turned over to me for the Judge in the Court at St. Paul. That the witness brought the defendant back to Washington, together with a Dodge Sedan Car which had been reported stolen by Col. Robert H. Patterson. The license tags on the car when it was seen by the witness in North Carolina were 80105, District of Columbia. The witness was asked to state any conversation he had with the defendant in North Carolina, he replied that he had talked with him about the car, and the defendant said he had no statement to make; that he would make his explanation in court. On the way back to Washington, the witness again asked the defendant about the car, the defendant's lawyer being present, when the defendant said we will talk about something else other than this automobile. Upon reaching Washington,
11 at No. 1 Police Station, in the presence of Col. Patterson, Detective Connors, the witness said, "Mr. Allen, have you anything to say about the Dodge Sedan that you were returned in from North Carolina." He said, "I have nothing to say." That at Police Headquarters, Col. Patterson identified the Dodge Sedan, which the witness had brought to Washington from North Carolina with the defendant.

And thereupon the defendant moved to strike out the testimony of the witness, because the statements testified to by the witness, as having been made by the defendant Allen do not amount to a confession or admission, and are irrelevant and immaterial, but the court overruled the motion to which ruling the defendant duly noted an exception, the court observing:

"The Court: Yes. Not because I wish to have it understood that I consider it a confession—I think it is admissible for what the jury may think of it. An exception may be reserved."

Col. Robert H. Patterson: That he is now stationed at the Army and Navy General Hospital, Hot Springs, Arkansas. That on April 9th, 1925, the witness lived at 3104 R St.,

and was a Lt-Col. in the Medical Corps of the United States Army. Thereupon the following occurred:

“Q. At that time, did you or did you not, own an automobile.” “A. I did.”

“Q. Will you describe to His Honor and the jury that automobile.” “A. Dodge Business type Sedan, B 1925 model, engine No. A motor No. A. 332436, serial No. car 206A206551.”

That the car “is in my wife’s name.”

“The Witness: What I wished to bring out was that the car is registered in my wife’s name and the license number was given in her name, but is my car. I do not want any misunderstanding, but to explain how the car came into my possession. My wife and I made the financial arrangement and paid for it in various checks.”

That he paid \$1,318.30 for the car. On April 9th,
12 1925, the car was stolen. There is no dispute about the car having been stolen on this date, and report of the theft on this date was made to the police. On May 2nd, 1925, the witness again saw the same car in front of Police Station No. 1. There is no dispute that this is the same car. The license issued for his automobile in the D. C. was D. C. tags No. 75907, and when the witness next saw the car at the Police Station, it did not have the same license tag, but had a license tag D. C. 80105.

Cross-examination:

It was the witness who inaugurated the initial negotiations for the purchase of the car with Mr. Bowman, salesman of the Semmes Motor Company of this city, the latter part of February, 1925; at that time the witness did not make any payment on account of the purchase of the car, but subsequently paid \$500 on account of the purchase price, and that his wife paid the balance of the purchase price. That the District of Columbia license tag for the automobile were registered in the name of his wife, Eleanor R. Patterson. That there was delivered, at the time of the purchase of the car, from the vendor, a Bill of Sale for the car, that the witness has one copy of the Bill of Sale in his possession, and the witness had with him a copy of the Bill of

Sale, a signed copy, signed by officials of the Motor Company, the original having been surrendered. Thereupon counsel for the defendant asked the witness if he might see the copy of the bill of sale, and thereupon the witness handed a paper to counsel for defendant, which the witness testified was a duplicate of the bill of sale issued by the vendor at the time of the purchase of the car. That at the time the witness' wife paid the first deposit, there was another paper delivered to his wife, and by his wife to
13 the witness, and the witness testified that he had that paper with him, and upon being asked if counsel might see it, showed the paper to counsel and testified, "it shows a deposit of \$25." That there were no other papers delivered from the seller of the car in connection with this purchase, and thereupon the following occurred:

"Q. If I understood you correctly in your testimony in chief, you stated that it was your car, but put in the name of your wife. Is that correct?" "A. That is correct."

"Q. This automobile was paid for from the joint funds of you and your wife." "A. Certainly."

Braxton Rosier: The witness, lives at St. Paul, North Carolina, knows the defendant, identified him in the court room, was raised up with him, within two miles from his home at St. Paul, North Carolina. That the witness saw the defendant on the 11th of April, 1925. "I was on my way to St. Paul and met him about one hundred yards from his home; him and his father going toward Lumberton in a Dodge Sedan." That the witness noticed when it passed. "I looked back to see the license plate on it, and it was Washington, D. C., on the license plate, and to the best of my knowledge, it was a nickel radiator." That he was able to recollect the number of the license plate, and that it was 80105. That he did not at any time have any conversation with the defendant about the automobile, and at the time he saw the defendant in the automobile, the defendant was driving it.

Cross-examination:

That after he passed the defendant on the road, going in the opposite direction, he looked back at the automobile defendant was driving, and saw a Washington license plate

on it, and saw on the license plate, "80105, D. C." "1925"
and did not see anything else. That it had a capital
14 D and a *and a* capital C on it, and 1925. That to the
best of his recollection, the car had a nickel radiator,
and the nickel extended all the way down the side, and on
the top of the radiator to the best of my recollection.

Thereupon the following occurred:

"Q. Did you write down the number, 80105, right then
and there, or in a few minutes thereafter? A. Yes.

"Q. How soon after you observed the number did you
write it down? A. Some few minutes.

"Q. Approximately how long? Did you stop your car
or write it down while your car was running? A. I was in
a buggy.

"Q. Did you write it down while traveling or stop your
horse? A. Yes.

"Q. Which did you do? A. Why, I was traveling.

"Q. Did you write it down—just approximately how long
after you passed the car? A. Perhaps ten minutes.

"Q. Did you write it in the back of a memorandum book
or on what? A. Just on a piece of paper.

"Q. Have you that piece of paper with you? A. Yes, I
have one.

"Q. I mean the one you wrote down on about ten minutes
after you say you passed him. A. Yes sir, I have it here.

"Q. Have you that piece of paper here? A. Yes sir.

"Q. May I see it? A. Yes sir.

15 "Q. Do I understand that you wrote that which
appears upon that side of this piece of paper, in the
road, sitting in your buggy, about ten minutes after you
passed him on that day? A. No sir, it was on the other side
that I wrote it, right there (indicating).

"Q. The figures 80105? A. Yes.

"Q. And the writing upon both sides of the paper was
not put there on that date, is that correct? A. Yes."

That the witness was not a sheriff, deputy sheriff, or con-
stable of the state, nor was he an officer having authority
to make arrements for violation of the criminal laws. That
the writing on one side of the piece of paper exhibited by
the witness was written by the Chief of Police, the Monday
preceding the trial of this case, and the number on the op-

posite side of the paper was written by the witness on April 11, when he stated he passed the defendant on the road. "That after having written down the numbers 80105 on the piece of paper, the witness placed it in a bill fold he carried in his pocket part of the time; that he just handed this piece of paper fo Ex-Chief of Police Rivers to write it on when the witness asked him for a little information about when the hearing was that he should attend, and Rivers just wrote it all down, when the hearing was, and witness just wrote what is on there."

"Q. Has April 10th anything to do with anything you requested him to write? A. No sir, that was the day that the defendant got home with the car.

16 "Q. Did you see him on April 10th? A. No sir.

"Q. What hearing did you refer to when you said—did I understand you to say you asked him to put down the date of a hearing? A. No sir, he put the date of the time he — taken the car in charge and the date that we left there to come back to Washington.

"Q. Didn't you say just a moment ago something about a hearing? A. I was supposed to be at the trial, but they had no trial.

"Q. Is that the hearing you are talking about, the one you now call a trial? A. Yes.

"Q. Where was that supposed to be? A. North Carolina, St. Paul.

"Q. Did you tell him that you were afraid you would forget these things? Is that the reason you wanted him to write them down? A. No sir.

"Q. Did you give him any reason for requesting that he write this down on this paper? A. I just told him that I would know then better how to explain it.

"Q. Explain what? A. That I had looked at the calendar and got the date wrong and so he went to his records and got the date that he was arrested.

"Q. You were looking at the calendar and got what date wrong? A. I was looking at May instead of April.

17 "Q. For what date? A. For the date that I seen him.

"Q. On the road? A. Yes.

"Q. Then he looked at the calendar and assisted in straightening you out. Is that right? A. No, sir, he didn't

look at the calendar. I was just looking at the wrong month and knew that the 11th came on Sunday instead of Saturday until I found it was April instead of May.

“Q. Did this gentlemen, Mr. Rivers, aid you in any way in discovering that error? A. He just told me that it was April instead of May that the car was stolen.

“Q. Did you notice that April 10th written here? A. Yes.

“Q. And April 10th means what? Why was it put there? A. That is the date that the defendant got home with the car or was supposed to have reached home.

“Q. You did not see him on that 10th, did you? A. No, sir.

“Q. When you looked on the calendar, when you said that you discovered you were in error, what was it you said about looking at the calendar, May instead of April? A. I just turned to the May calendar instead of the April calendar.

“Q. When you turned to the May calendar, what did you discover? A. Discovered that the 11th came on Sunday.

“Q. The 11th of May? A. Yes.

“Q. Then you reasoned that it must have been in 18-19 April that you saw him? A. Yes.”

20 On re-direct examination the witness was asked how long after he had seen the defendant on the road with the Dodge Sedan was it that he looked at the calendar to determine the date, and he testified that he cannot say positively but:

“I knew the date then, but I was not expecting to have to come up here at all and taken no note of it until I got a summons to come up here, and I went to the calendar to find out for sure the date that I seen him so I would know.

“Q. Were you able to fix the date? You testified in your direct examination that it was April 11th, 1925, that you saw him? A. Yes.

“Q. How do you remember that date? A. Because it was on Saturday morning, and Saturday came on the 11th, and I seen him and the report was that the car was stolen on the night of the 9th, and it was on the 10th when he got home with it.

“Q. You testified, I believe, in answer to questions, that you wrote this down on the back of it, which is in your own handwriting. That is correct? A. Yes.

“Q. And that this on the front is not your handwriting? A. That heavy hand is not mine.

“The Court: I understand that nothing except the figures that he gave as being the number of the plate, that is all that is in his handwriting.

“By Mr. Horning:

“Q. I was a little obscure on that. Mr. Wampler had the piece of paper during most of the questioning.
21 Can you tell us how it was that you happened to write that number down? A. Generally, as a car passes me that way, if I have time, I generally notice the license number and seeing him with a new car, when he passed I looked back to see to get the license number on it, and seen it was a Washington, D. C. license plate, and it had been reported a car stolen here by him before, so I just taken the number down to remember it.”

And thereupon the following occurred, at the bench out of the hearing of the jury:

“Mr. Wampler: I did not want to make a motion for obvious reasons before, but I want to strike out from the record that part of the answer in which the witness Rosier stated that it had been reported that a car had been stolen.

“The Court: No objection was made to the question. Counsel having waited to see what the answer was, it is too late to move to strike out. For that reason the motion is overruled.

If he has time he generally notices the numbers of a great many machines he passes on the road; not all of them; most of them. That he does not write down the numbers as he passes them. That the reason he wrote it down was because he heard from a good many people in the settlement that the defendant had a stolen car before. Asked if he ever heard of defendant being convicted of any offense, convicted of stealing a car, witness replied: “Never heard of it because I never get any reports from here whether he was convicted or not.”

Oliver B. O'Rear: That he is a Clerk in the Income Tax Bureau of the United States Government in Washington, and over the objection and exception of the defendant, the witness was permitted to testify that on the 9th day of April, 1925, about 8:30 o'clock in the morning, he parked his automobile on B Street, just beyond 21st Street, toward 22nd Street, and that his automobile had license tags D. C. 80105. That about one-thirty o'clock he went to get his car and found that there were no tags on it, and the witness looked around and could not find the tags, and thereupon the witness was shown the license tags D. C. No. 80105 and testified that they were the license tags which he had on his car, a Chevrolet coupe, on April 9th.

B. Frank McMillan: That he is the Sheriff of Robinson County, North Carolina, that he saw the defendant in April 1925, does not remember the exact date, it was late in April, it was around the 20th or 25th, somewhere in there, saw the defendant in St. Paul, Robinson County, North Carolina, as near as the witness can recollect the date when he saw the defendant, was the 25th day of April, on a Saturday afternoon, and he saw the defendant in a Barber Shop in St. Paul, North Carolina, and arrested him. The witness asked the defendant if he was Mr. Allen, and the defendant replied that he was, and thereupon the witness told the defendant that he had a telegram instructions from Washington, to hold him for the Washington authorities and took him under arrest at that time, and the witness took him to the jail at Lumberton, North Carolina. On the way I stopped by his father's house and in front of his father's house read to him a warrant. Thereupon the witness was shown some license plates and testified that they were the license plates on the rear of a Dodge Sedan standing in front of the barber shop in which Allen was when arrested. The witness took the automobile in his possession and carried it to Lumberton.

23 And thereupon the Government offered the license tags or plates, in evidence, to which the defendant objected, but the court overruled the objection and received the said license plates in evidence, to which ruling of the court the defendant duly noted an exception.

And thereupon the Government rested its case.

And thereupon at the bench out of the hearing of the jury the following occurred. Thereupon counsel for the defendant moved the court to require the Government to elect between the counts of the indictment upon which it would go to the jury, but the court overruled the said motion, and to which ruling of the court the defendant duly noted an exception. And thereupon the court observed, out of the hearing of the jury:

“The Court: Yes. Well I think I will overrule that motion, and let the jury determine the question of fact, if they come to that point. They may not reach it—as to whose car it was, whether the Colonel’s or his wife’s. His testimony that it was his, is a conclusion of law, upon the facts that he has stated; and my personal impression is that, on the facts related by him, the jury might well find that it was the wife’s car, in spite of his statement that it belonged to him, because the title was taken in her name; for, certainly a creditor would be able to hold it as her car.

“The Court: I am inclined to deny the motion, for we cannot expect to go into these questions of law at this time. I overrule the motion and exception may be noted.

Mr. Wampler: Yes, we note an exception.”

And thereupon, out of the hearing of the jury, the defendant moved the court to direct the jury to return a verdict of not guilty, because the Government had not shown the defendant to have been in possession of recently stolen
24 property, a personal exclusive possession such as the law requires; and upon the further ground that the testimony showed a joint ownership of the automobile rather than a personal and exclusive ownership in either Colonel Patterson or his wife, and thereupon the court observed, out of the hearing of the jury:

“The Court: I do not wish to express any opinion as to these questions of law, further than to say, I think it would be wise now to take the verdict of the jury upon the case rather than to direct any verdict; and, for the purposes of this trial, I will overrule these motions, and an exception may be noted to each one of them.”

And thereupon the defendant moved the court to instruct the jury, that the 11th day of May, 1925, was on Monday, and not on Sunday, which motion the court granted.

And thereupon the defendant renewed the motions heretofore made, each of which were denied by the court and to which ruling the defendant duly noted an exception. The case was argued by both sides to the jury.

And thereupon the Court charged the jury as follows:

Charge of the Court.

The Court: Mr. Justice STAFFORD: GENTLEMEN OF THE JURY: Unless counsel desire it, I shall not repeat all that has been said to you in so many cases, with regard to the principles that apply to all criminal cases; you must keep them all in mind. I refer, for instance, to the fact that the indictment itself is not evidence, and that the charge must be proved beyond a reasonable doubt, the jury keeping in mind the presumption of innocence until the evidence, in spite of that presumption, satisfies your minds beyond a reasonable doubt. To begin with, in the trial of any case, you look upon the defendant as innocent of the charge; you are not to look suspiciously upon him, or harbor any suspicions about him; you are to trust entirely to the evidence.

Now, in this case, the charge contained in the first count is that the defendant stole the automobile in question, and that it was, at that time, the property of Eleanor R. Patterson; the second count charges the same offense with respect to the same automobile, except that there it is alleged to have been the property of Robert U. Patterson.

Perhaps I should deal with that question of ownership, first.

Colonel Patterson's statement, that the automobile belonged to him, must be taken in the light of the circumstances, and facts disclosed by the evidence. Ownership is a legal conclusion, resulting from the facts in the case, and it is not for anyone to determine that question by simply saying that he owned the automobile. If the facts bear a different interpretation, it will lead necessarily to a different conclusion.

Now, in this case, the evidence, as I recall it, upon that subject, is that this automobile was bought from the Semmes Motor Company; a duplicate of the bill of sale has been introduced in evidence—

Mr. Wampler (interposing): May I interrupt there, Your Honor. Your Honor is in error. I asked if I might see it, and witness showed it to me and I handed it back to him, and I think the record will bear me out, which I have had written, that it was not introduced, either by the Government or by myself.

The Court: Well, it was either introduced or else was read, so that the evidence of what it shows was brought before the jury by yourself.

Mr. Wampler: Well, Your Honor, I think it is my duty as an officer of the court, to say that I think Your Honor is in error. I asked if I might see it; I looked at it and handed it back to him. If Your Honor thinks different, I want to reserve an exception; and I will state to Your Honor that if Your Honor will read the record—I have it here—I think it will bear me out. My idea is different from that of the Court's.

The Court: Will you let me see the testimony of the witness Patterson?

Mr. Wampler: It begins at the bottom of page 6.

The Court (examining the record): This is cross-examination.

Mr. Wampler: I think you will find it says——

The Court (interposing): I will read the testimony by myself. (Examining transcript.) This part remained in; some other parts of the testimony were stricken out. (Reading:)

27 “The Witness: What I wished to bring out was that the car is registered in my wife's name and the license number was given in her name, but it is my car. I do not want any misunderstanding, but to explain how the car came into my possession. My wife and I made the financial arrangement and paid for it in various checks. I just wanted to be sure.”

The cross-examination begins on page 11. (Reading:)

“Q. Who was it that inaugurated the initial negotiations for the purchase of the automobile? A. I did.

“Q. At what place and with whom? A. With Mr. Bowman, salesman of the Semmes Motor Company of this city.

“Q. When? A. The latter part of February of this year.

“Q. At that time did you make any payment on account of the purchase of it? A. I did not.

“Q. Subsequently, did you make any payments on account of the purchase of the car? A. I did.

“Q. How much? A. \$500.

“Q. Do you know who else made any payments, if any, on account of the purchase? A. Exactly.

“Q. Who was it? A. My wife.

“Q. She paid the balance? A. She paid the balance.

“Q. When you saw the car in the District of Columbia for the first time——”

28 That is another subject. (Reading:)

“Q. Do you know in whose names the D. C. license tags were registered?”

These are questions asked by the defendant's counsel.

“A. Yes.

“Q. In whose? A. Those of my wife, Mrs. Eleanor R. Patterson.

“Q. Was there or not delivered, so far as you know, from the vendor a bill of sale for this car? A. At the time of the purchase of the car?

“Q. At any time. A. There was.

“Q. Do you know where that bill of sale is? Have you it in your possession? A. I have one copy. There is another in the possession, I think, of the Court in North Carolina.

“Q. Have you a copy with you? A. I have.

“Q. Is it a signed copy? A. Signed by officials of the motor company.

“Q. May I see it? A. I surrendered the other bill of sale.

* * * * *

“A. Sure, that is the first one. There (indicating) is a duplicate of it signed by an official of the Semmes Motor Company.

* * * * *

“Q. This paper which you have just handed me, the paper which you have characterized or which you produced in answer to my query as to whether or not a bill of sale was

delivered by the vendor of this automobile, is this the paper? A. That is a copy, a duplicate.

* * * * *

29 "Q. And no other paper was delivered from the seller to the buyer of this particular automobile save this? A. Yes, at the time my wife paid the first deposit.

"Q. Was there another paper? A. There was.

"Q. Delivered to whom? A. Delivered to my wife and by her to me.

"Q. Have you that paper? A. I have.

"Q. May I see it? A. It shows a deposit of \$25.00.

"Q. Were there any other papers delivered from the seller of this car in connection with this purchase? A. No.

"Q. If I understood you correctly in your testimony in chief, you stated that it was your car but put in the name of your wife? Is that correct? A. That is correct."

That was the part that gave me the impression I have.
(Continuing reading:)

"Q. This automobile was paid for from the joint funds of you and your wife? A. Certainly."

I find nothing in connection with Mr. Robinson's (Patterson's) testimony to show that the papers themselves were received in evidence, so that may be laid aside. I have read to you, I think, all that he said as to whose name the car was taken in. Now, he says that he paid \$500, and his wife paid the rest, and that is to be taken in connection with his statement that it was paid for by their joint funds. It is for you to say whether all the money that was put in—say which
30 paid for it—were the general funds of the two, or whether he meant that the \$500 that he put in was his money and the rest of it, that she put in, was her money, since it was paid for by joint funds; that will be a questions of fact for you to decide.

Now, however, it may be, that Col. Robinson (Patterson) understands the matter of legal ownership, it is for you to say whether, in those circumstances, those being the facts, the car was owned by Mrs. Robinson (Patterson). Under the first count, if you do find that it was hers, that part of that count would become true; if you do not, but find that the car belonged to him, under the evidence in the case,

then the charge with respect to ownership in the first count would not be true, and that count would go out of the case, and you would find a verdict of not guilty upon that count. If you find that the count was correct, in respect to the ownership in the second count, why then you would have to consider whether the other part of the charge is made out—in other respects, is true. The charge is the same in each count.

Now, the charge is that the defendant stole this car. The Government relies upon evidence in this case tending to show, first, that the car was stolen, and the first question for you to decide is whether you are satisfied, upon the evidence, beyond a reasonable doubt, that it was stolen. I shall not rehearse the evidence; counsel have done it on both sides. In view of that evidence, are you satisfied and you have a right to take into view all the evidence with respect to the car, all that bears upon that subject; if you find it to be the same car that was brought back from North Carolina, if you find it was stolen by somebody from the place in the District of Columbia where it was left, if you find that it was stolen by anybody, your minds are
31 not satisfied about that, beyond a reasonable doubt, you will not find the defendant guilty for that reason. If, however, you find beyond a reasonable doubt, that it was stolen by someone, the question is whether the evidence satisfies you that the defendant stole it.

I should not submit the case to you at all, unless I held that there is evidence in the case tending to show that the defendant stole it; but, whether it satisfies your minds, beyond a reasonable doubt, that he did steal it, is entirely for you to say. There is evidence tending to show that the car was stolen. There is evidence tending to show that the defendant was seen in possession of this car shortly after it was stolen. I shall not refer to the testimony, because you have heard it referred to in the arguments, and you will have it in mind, and you will recall the evidence from the lips of the witnesses rather than from the arguments of counsel, for it is your duty to remember the evidence, and your minds are more likely to recall it correctly and fairly than any other minds, because, of course, you have no prejudices and no zeal and no bias.

So, also, with respect to witnesses. You ought not be influenced by any opinion that counsel expresses or seek to instill into your minds as their opinions of witnesses; they may comment upon the testimony of witnesses, of course, in such way that you would infer they, perhaps, did not think much of their testimony, or that they thought very highly of it, but it is your impression that you get from the witness when you look to him, that you rely upon, that is, what you recollect of it; and you are not to be moved by an impression that a witness makes upon you, by his demeanor and by his testimony, by any opinion which counsel may express with regard thereto.

32 If you find that the defendant, shortly after the car was stolen, was in the possession and actual control himself of the car, and if there is no explanation in the evidence before you, no reasonable explanation of how he came to be in possession of the car, except that he

33 stole it, then you have a right to find therefrom that he did steal it, because that is the rule of law which has been stated to you over and over again, that the jury have a right to infer that a defendant in possession of stolen property shortly after it was stolen, did steal it, if no reasonable explanation is offered in the evidence, or by the evidence, of the fact of his being in possession, except that he did steal it. Now, by that, I do not mean that the defendant is under obligations to testify but you take the case as it is and reason upon the evidence which you have before you.

Now, when I say "whether any explanation is offered, by the evidence," I speak broadly, because in the circumstances disclosed by the evidence, the jury may infer that the defendant may have come honestly by the car, may not have stolen it, although, he was found in possession of it. Even if no witnesses are produced on the part of the defendant, the case itself may be such, in its circumstances, that the jury may say reasonably that nevertheless he may not have stolen it. They are not to convict him unless the circumstances satisfy their minds beyond a reasonable doubt that he did steal it.

There is one piece of evidence which came out, which I feel in duty bound and fairness to the defendant to call attention to. The witness—I have forgotten his name—he said he had known the defendant from boyhood, and lived

within two miles of him for many years, and he said that he remembered the number. On direct examination he did not state anything about having written it down, as I remember the testimony, but on cross-examination, when he was pressed with respect to that, he said he did write down the number. Then, on re-examination, he was asked by

34 counsel for the Government, how he came to write it down. You will remember that there was an extended cross-examination, which perhaps had a tendency to weaken the force of his statement that he remembered the number, and further cross-examination perhaps tending to weaken his statement that he had written it down at the time. Now, that question was not objected to; there was plenty of time to object, but counsel waited until the answer was given, so that is in the case, but it is not in the case as tending to prove that the report referred to by the witness was true at all, and you must not use it as any evidence tending to show that the report of the witness referred to was true. It can only be used by you, if you believe it—believe what the witness said—as an explanation of his writing down the number at the time, if you believe he did. You must not make any further use of it.

I think that you will deal with the evidence fairly, both to the Government and to the defendant, use your own recollections of the evidence, rely upon your own impressions of the witnesses and use your own common sense and good judgment, conscientiously, and you will be able to reach a conclusion that will be satisfactory to you, and of course it will have to be accepted, whatever it is.

It does not occur to me there is anything further. Do counsel wish instructions upon some particular part of the case?

Mr. Wampler: May I reserve an exception to that part of Your Honor's charge with respect to the joint funds, that the machine was paid for from the joint funds; to that part of Your Honor's charge, wherein Your Honor referred to the fact that you would not have submitted the case unless the evidence indicates something to show what the defendant did, etc.; to that part of Your Honor's charge with respect to the elements of the recent possession, from
35 which an inference could be drawn, to that part of Your Honor's charge, wherein Your Honor referred

to the fact that if the evidence showed any reasonable explanation—or no reasonable explanation is furnished by the evidence; to that portion of Your Honor's charge referring to the failure of the defendant's counsel to object to a question with respect to what the witness said about the report at the time heard?

The Court: I will say, of course, with respect to one point Mr. Wampler mentions; that is, that I should not submit the case unless there was evidence having some tendency to show the guilt of the defendant, and that is, because counsel, in his argument, said there was not anything tending to show the guilt of the defendant. If he means that there is not anything legally tending to show it, why, he must accept the ruling of the court that there is. If he only means that there is not sufficient evidence or proof, he is entirely justified in so arguing.

Mr. Wampler: May I reserve an exception to Your Honor's last observations to the jury?

The Court: Yes; an exception will be noted.

And the Court now certifies that the foregoing bill of exceptions contains all of the evidence introduced upon the trial of this case, and contains a full statement of all of the proceedings had upon such trial.

And the defendant now tenders this his bill of exceptions herein, which he prays may be signed, sealed, enrolled and made a part of the record in this case, this 2d day of January, 1926, nunc pro tunc, which is accordingly done.

Given under my hand and seal the day and year aforesaid.

WENDELL P. STAFFORD,
Justice.

Endorsed on cover: District of Columbia Supreme Court. No. 4452. Richard G. Allen, appellant, vs. United States of America. Court of Appeals, District of Columbia. Filed Mar. 6, 1926. Henry W. Hodges, clerk.

